

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: PETITION OF BELL SOUTH
TO IMPLEMENT NEW AND
INCREASE EXISTING LATE
PAYMENT CHARGES

)
) DOCKET NO. 00-00041
)
)

RESPONSE TO BRIEF OF BELL SOUTH

BellSouth cites no law or material facts¹ which support its view. It argues in its brief that: 1) its new late payment charge does not increase rates for basic local exchange service; 2) past actions of the Tennessee Public Service Commission, and by implication the TRA, are irrelevant; and 3) that the TRA, at BellSouth's request, can impose a late payment charge on the "subscriber/end-user" of another company's services for the sole benefit of BellSouth, even when BellSouth does not provide the services to the user. The company's position is absent any rational basis and is contrary to existing law and policy.

BellSouth's proposed late charge tariff has a stated intent of charging BellSouth's

¹None of the companies it named as having late payment charges are incumbent local exchange companies. Moreover, the Consumer Advocate Division specifically promulgated a discovery request asking BellSouth to describe all similarities. It does not present any evidence that the charges for service include late payment charges or any tariffs such as the tariffs applicable to it. Although the Consumer Advocate Division has filed a motion to compel the hearing officer has not ruled on the motion. Permitting BellSouth to make such arguments without permitting discovery violates the Consumer Advocate Division's substantive and procedural due process rights.

“subscribers” a 3% late payment charge whenever the subscriber pays the bill late. The term “subscriber” includes subscribers such as consumers of BellSouth’s service which is composed of end users and competitive local exchange companies (CLEC(s)), and subscribers of BellSouth’s CLEC subscribers. Thus, the company argues that it can charge its own subscribers and the subscribers of other companies. BellSouth would then add these charges to the bill of a basic local exchange service subscriber or the bill of a competing long distance company’s subscriber.

The company’s tariff in effect on June 6, 1995, however, contains the definition that a subscriber is:

Any person, firm, partnership, corporation, municipality, cooperative organization or governmental agency **furnished communication service by the Company under the provisions and regulations of its tariff.**²

Under this definition, rates and charges by necessity arise from “communications service” furnished by the company under its tariffs. Subscribers of other companies are not furnished communications service by BellSouth under the provisions and regulations of any BellSouth tariff.

There is no dispute of material fact that Basic local exchange services are communications services arising under the tariff of an incumbent local exchange company *prior to June 6, 1995*³ and *on June 6, 1995*.⁴ Rates for basic local exchange service prior to and on

²Third Revised Page 17, effective December 28, 1990.

³Tenn. Code Ann. § 65-4-101 (d).

⁴Tenn. Code Ann. § 65-5-208 (a)(1).

June 6, 1995 include recurring and nonrecurring charges. These charges include any and all administrative costs of collection on that date.

BellSouth does not dispute the fact that basic local exchange service rates *prior to* June 6, 1995 included administrative charges for late payments and collection, and working capital until a bill is collected as Mr. Hickerson testified in his affidavit. BellSouth does not dispute the fact that basic local exchange service rates *on* June 6, 1995 included charges for late payments and collection, and working capital until a bill is collected as Mr. Hickerson testified.⁵

Because the tariffs prior to June 6, 1995 are the same tariffs that defined basic local exchange service on June 6, 1995, BellSouth's actual tariffs are useful. The tariffs determine the extent of what charges were permitted on June 6, 1995.

Tennessee consumers respectfully submit that the provision of Tenn. Code Ann. § 65-5-208 (a)(1) which provides that "Rates for these services shall include both recurring and nonrecurring charges" is the legislative intent to including all recurring and nonrecurring charges. As a result, there is a necessity to determine whether the 3% late payment scheme was a separate charge on or before June 6, 1995.

The phrase "basic local exchange telephone service rates" in Tenn. Code Ann. § 65-5-209 (f) includes recurring and nonrecurring charges which shall not increase for four years.

The provision of Tenn. Code Ann. § 65-5-209 (f) which provides that initial basic

⁵The company's position, without substantive explanation, is simply that the charges included in the rates are not relevant.

local exchange telephone service rates shall not increase for four years includes recurring and nonrecurring charges. This section, considered *in pari materia*, relates to the same initial basic local exchange telephone services described in Tenn. Code Ann. § 65-5-209 (c) and Tenn. Code Ann. § 65-5-208 (a) (1). Basic local exchange telephone service rates in Tenn. Code Ann. § 65-5-208 (a) (1) include recurring and nonrecurring costs. As a result, Tenn. Code Ann. § 65-5-209 (f) should be interpreted to prohibit increasing recurring and nonrecurring charges for four years.

Moreover, BellSouth's proposal in this case is unlike the result in the five line tariff case. In that case, BellSouth sought to charge every residential user with more than a certain number of lines the business rates. The Tennessee Regulatory Authority denied that proposal and merely held that a consumer could get the residential rate by simply stating that the additional lines would be used for residential use.

BellSouth's proposal violates the aggregate revenue requirements of Tenn. Code Ann. § 65-5-209.

BellSouth's proposal violates the aggregate revenue requirement because the statute neither Tenn. Code Ann. § 65-5-209 (e) or Tenn. Code Ann. § 65-5-209 (f) authorize headroom and because BellSouth can not show the amount of revenue which would be attributable to nonbasic rates as opposed to basic rates and revenues from persons who are not its subscriber for billed services.

The proposed late payment changes or diminishes the relationship between the then existing service provide and the rates for those services provided.

BellSouth's argument that the "basic" classification never existed prior to June 6,

1995 is either wrong or misleading. Tenn. Code Ann. § 65-4-101 (d) plainly states that tariffs prior to June 6, 1995, identify Tenn. Code Ann. § 65-5-208 (a) (1) basic local exchange telephone services. Tenn. Code Ann. § 65-5-208 (a) (1) specifically provides that the rates for those tariffs include “charges.”

BELLSOUTH TARIFFS

There are no June 6, 1995 tariffs which support a separate 3% late charge. A number of BellSouth tariffs, however, help define whether the proposed charge constitutes a material change in the financial terms and conditions of service.

A2.3.5 Application for Service

- B. The Company reserves the right to refuse service to any applicant who is found to be **indebted for undisputed regulated charges to the Company⁶ for telephone service provided in Tennessee or in any other state in which the Company operates** until satisfactory arrangements have been made for the payment of all such indebtedness. The Company may also refuse to furnish service to any applicant desiring to establish service *for former subscribers of the Company who are indebted for previous service*, regardless of the listing requested for such service, until satisfactory arrangements have been made for the payment of such indebtedness.⁷ *All regulations as stated in A2.2.10 will apply.*
- C. If telephone service is established and it is subsequently determined that either condition in A2.3.5.B. preceding exists, the Company may suspend or disconnect such service until satisfactory arrangements have been made for the payment of the prior

⁶Where BellSouth is purely a billing agent, no customer is indebted to BellSouth for services provided by BellSouth. The indebtedness is to the company providing the service.

⁷This tariff also defines the standard which former BellSouth customers must meet for having service restored. BellSouth’s proposed late payment charge adds to that standard.

indebtedness.⁸

A2.4.2 Deposits

- C. Such additional deposit shall be reviewed annually and a partial refund shall be made to the subscriber in an amount equal to the difference between the amount on deposit and the amount then required to cover the unexpired portion of the basic termination charge and/ or minimum service period. Upon discontinuance of the service, such additional deposit may be applied in payment of any and all amounts accruing for service.⁹
- * * *
- E. The fact that a deposit has been made in no way relieves the applicant or subscriber from complying with the Company's regulations as to advance payments and the prompt payment of bills on presentation or constitutes a waiver or modification of the *regular practices*¹⁰ of the Company providing for the discontinuance of service for non-payment of any sums due the Company. (Emphasis added).

A2.4 Payment Arrangements And Credit Allowance (Cont'd)

A.2.4.3 Payment For Service

- A. The subscriber is responsible for payment of *all appropriate charges for completed calls, services, and equipment*.¹¹ All charges due by the subscriber are payable at the Company's Business Office or at any agency duly authorized to receive such payments. If the subscriber does not pay or dispute the bill by the due date, the

⁸Bell's tariff creates the reference that an applicant will be denied service or disconnected if he/she does not pay "late payments." And proposed tariff conflicts w/ A2.4.1 Advance payments (7-94).

⁹Effective: September 1, 1993

¹⁰Tennessee consumers maintain that the "regular practices" for basic local exchange service are those in effect on June 6, 1995 and that those regular practices or qualities do not incorporate a 3% late charge.

¹¹The tariff lists all appropriate charges and must still apply for basic local exchange service.

- Company may send out a late notice and consider the account for disconnection of service(s).¹² If the subscriber disputes a bill, the Company will investigate the bill and take appropriate action.
- B. The subscriber shall pay monthly in advance or on demand all charges for service and equipment and shall pay on demand all charges for long distance service and additional local message charges or billed local usage. *The subscriber is responsible for payment of all charges for services furnished the subscriber¹³, including charges for services originated or charges accepted at the subscriber's station.*
- C. Should service be suspended for nonpayment of charges, it will be restored *only* as provided under "Restoration Charge" in Section A4. of this Tariff.¹⁴
- D. When the service has been disconnected for nonpayment, the service agreement is considered to have been terminated. Reestablishment of service may be made only upon the execution of a new service agreement which is *subject to the provisions of this Tariff*.¹⁵
- E. In its discretion, the Company may restore or reestablish service which has been suspended or disconnected for nonpayment of charges, prior to payment of all charges due. Such restoration or reestablishment shall not be construed as a waiver of any such or other charges due and unpaid or for the violation of the provision of this Tariff; nor shall the failure to suspend or disconnect *service for nonpayment of any past due account*¹⁶ or accounts operate as a waiver or estoppel to suspend or disconnect service for nonpayment of such account or of any other past due account.

¹²No additional late payment charge other than those within the rates are contemplated.

¹³If the late payment charge is not payment for a BellSouth service the subscriber has no duty to pay it. BellSouth seeks to apply the charge to subscribers of non-BellSouth service, despite the fact that true subscriber of BellSouth service in such an instance is a CLEC or other billing agent pursuant to tariff A37.

¹⁴BellSouth's proposed tariff adds to the restoration charge for basic local exchange service.

¹⁵The proposed late charge payment is an additional charge.

¹⁶The tariff on June 6, 1995 clearly contemplated past due accounts for service but did not institute additional charges because those charges had already been considered in the rate case.

- F. An *administrative charge*¹⁷ will be applied by the Company for each time a check or bank draft is returned by a bank to the Company for the reason of insufficient funds.

1. Returned check/ bank draft

		Rate	USOC
NA	(a) Each	\$10.00	

- G. Customers who have deferred payment agreements for services provided by the Company will be allowed to spread the *services charges*, as specified in Section A4. of this Tariff, *plus interest* over the respective period of the agreement.¹⁸ Interest on deferred amounts will be calculated at the rate set forth in the deferred payment agreement executed by the customer. The interest rate to be charged on deferred payments will be revised periodically by the Company.¹⁹ If, in the judgement of the Company, the maximum interest rate allowed by law is insufficient to cover the costs of providing the deferred payment option, the Company will suspend the availability of said option until such time as the costs of providing said option can be recovered through the application of a lawful interest rate. Suspension of the deferred payment option will not affect customers who have executed a deferred payment agreement prior to the effective date of such suspension. The deferred charges (including calculated interest) will be prorated on a monthly basis over the selected deferral period length.²⁰

Since tariffs prior to and on June 6, 1995 defined BellSouth's rates and charges

¹⁷This tariff lists the **only** administrative charge for costs associated with collection and billing. The Consumer Advocate Division is unable to comment on the issue of whether or not any investigation is taking place or being considered regarding any changes in the amount of the bad check charge.

¹⁸The tariff on June 6, 1995 contemplated late payments and provided for "interest" on the unpaid amount as compensation for the company for deferred payment agreements. BellSouth's new proposed late charge is a payment *in addition* to interest and as a result is governed by the provisions on extortion for basic local exchange service and where BellSouth is merely a billing agent.

¹⁹This amount is fixed on June 6, 1995.

²⁰Effective: April 20, 1995

and none of the tariffs permitted the late charge proposed by BellSouth, it is clear that the company's proposed charges would change or diminish the rate-service relationship. As a result, the basis of BellSouth's argument that the proposed late payment charge does not diminish or change the rate service relationship must fail.

The Authority should not permit BellSouth to charge subscribers of other entities when BellSouth does not provide a service which those subscribers sought.

When BellSouth is nothing more than a billing agent for other entities. It has no right to initiate charges on subscribers. The other entities for which BellSouth bills may themselves be billing agents, further separating BellSouth from the actual provider of service. Indeed, if BellSouth initiates such charges it would violate Tenn. Code Ann. § 65-4-125 and Tenn. Code Ann. § 65-4-122 (b). It can not use its position to add charges for anything a customer does not order from it. Moreover, adding such charges would be extortionate.

BellSouth's existing tariff recognizes that its billing service contract is with a "customer," not the end user. Furthermore, BellSouth has provisions or can change provisions for serving its billing customer if such changes are needed.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been faxed and mailed postage prepaid to the parties listed below this 6th day of June, 2000.

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